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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979
No.

THE CITY OF NEW YORK, JAMES WALKER, and JOSEPH CARRINO,

Petitioners,

-against-

JOHN N. DePIETRO,

Respondent.

RESPONSE TO
PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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This is the response of John N. DePietro to the petition for a writ of certiorari to review the judgmentof the United States Court of Appeals for the Second Circuit in this case.

Statement of the Case

On June 4, 1977 the plaintiff-respondent John N. DePietro (hereinafter "plaintiff") was by the defendants apprehended, arrested, handcuffed and

carried away in a motor vehicle in the full view and presence of his ex-wife, his son and the public while he was lawfully engaged in conversation with them on the public highway (A 4,5,6,7,14).* He was in custody for more than 45 minutes (A8) and although during the whole time he was in custody he repeatedly requested access to his lawyer he was refused (A 7,8) and otherwise mistreated before release without any explanation for the arrest (A 7,8,9,10).

This lawsuit was thereafter commenced in the United States District Court for the Southern District of New York based on diversity of citizenship, which was sustained (A298,299) by the verdict of the trial jury as a matter of fact presented to them. It was also based on a claim of violation of his constitutional right to be free from unlawful arrest, which was likewise sustained by the

*References preceded by "A" are to pages of appellant's Appendix in the Circuit Court.

verdict of the trial jury (A 299) as a matter of fact.

During the arrest and detention, the defendants neither had an arrest warrant (A 194, 197) nor informed this plaintiff that there was an outstanding warrant for his arrest (A 29, 31, 40).

The plaintiff also asserted a claim under 42 U.S. Code, Section 1983 which was likewise sustained by the jury (A299).

The defense of good faith on the part of the defendants was rejected by the jury (A 299, 300).

The jury awarded compensatory damages of $20,000.00 and punative damages of $10,000.00. The punative damages were rejected by the Court of Appeals and the compensatory damages were reduced by remittitur to $10,000.00 which was accepted by the plaintiff in the remittitur as filed by him.

POINT I

THE DISTRICT COURT HAD JURISDICTION

The action was based both on the common law

right to be free from false arrest, wherein jurisdiction was given by diversity of citizenship, and also by the statutory right (42 U.S. Code, Section 1983) to be free from violation of civil rights. The trial jury decided as a matter of fact presented to them, in favor of the plaintiff (A298, 299).

POINT II

REMITTITUR PRACTICE WAS PROPERLY UTILIZED

Remittitur practice has been recognized in the Federal courts for upwards of 150 years. The various citation of cases in the Order of the Court of Appeals (2a, 3a, 4a, 5a, 6a)* clearly establishes the practice and the judicial precedent for the use of Remittitur by Appellate Courts in the Federal system.

Contrary to the Petitioner's allegation that the Appellate Court indicated that prejudicial error

*Numbers in parentheses followed by "a" refer to pages in the Appendix annexed to the petition.

occurred bearing on the liability of one of the defendants, there is no such declaration or even an implication in the Order that prejudicial error existed. The Order merely stated a guideline by way of suggestion to the trial court if there be a rejection by the plaintiff of the remittitur offered, followed by a new trial. It should be noted that the defendants after a very lengthy and detailed charge to the jury by the Court (A 240 thru A 280), on request by the Court for exceptions, took no exceptions (A280). That therefore established the law of the case.

POINT III

WE MAY NOT SPECULATE AS TO THE REASONS FOR THE JURY'S VERDICT

The Court in its charge presented both causes of action to the jury, to wit, "the so-called false imprisonment claim" and the claim "that his arrest and confinement on June 4, 1977 was unlawful and violated his constitutional right to be free from unlawful arrest" (A 265). The Court also instructed

the jury there could be but one recovery to encompass either or both the constitutional claim and the common law claim (A 277). It would be pure speculation to guess the motivation behind the jury's verdict.

POINT IV

THE VERDICT OF THE JURY IS NOT EXCESSIVE

The Court instructed the jury to consider not merely monetary loss but also mental anguish, pain and discomfort (A 274) in their appraisal. This plaintiff, a responsible businessman (A 4) was in the presence of his 4-year old son, ex-wife and the public; arrested, hadcuffed and carted away in humiliation (A 5, 6, 7), to be forever after asked by his son the reason for the arrest and humiliation. Only the jury had the right to appraise the full damage from the evidence allowed them.

POINT V

ALL THREE DEFENDANTS ARE EQUALLY LIABLE

The Court instructed the jury that they could

find all three defendants jointly liable without apportioning the percentage of liability for each defendant (A 277). Likewise, they were charged that even if they found for the plaintiff on both claims he may have only one recovery for his damages (A 277). With a single recovery against all three defendants having been rendered, we may not speculate as to the jury's determinations.

POINT VI

THERE HAVING BEEN AT LEAST ONE VALID BASIS FOR THE JURY'S VERDICT, IT MUST STAND AGAINST ALL DEFENDANTS

There were two causes of action claimed. The jury found in favor of the plaintiff on both (A 299). The defendant, City of New York, makes much concerning an alleged error in the Section 1983 charge. It would be moot even to appraise such claim. It had been established at the trial that the other two defendants were acting on behalf of the"City." Legally the "City" was bound

by their conduct and the jury found the "City" equally liable. Furthermore, Section 50 j of the General Municipal Law of the State of New York is in part as follows:

> §50-j. Liability of police officers for negligence in the performance of duty.--1. Notwithstanding the provisions of any general, special or local law, charter or code to the contrary, every city, county, town, village, authority or agency shall be liable for, and shall assume the liability to the extent that it shall save harmless, any duly appointed police officer of such municipality, authority or agency for any negligent act or tort, provided such police officer, at the time of the negligent act or tort complained of, was acting in the performance of his duties and within the scope of his employment."

Hence, there being no justification for interfering with the verdict and Order concerning the other two defendants , the defendant City of New York is liable on the judgment as entered, and it should not be interfered with.

CONCLUSION

The Petition should in all respects be denied.

March 24, 1980.

Respectfully submitted,

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